

Private foundations; low-interest loans to blind persons. Low interest rate loans by a private foundation, established to aid the blind in securing employment, that are made to blind persons who desire to establish themselves in business but who are unable to obtain funds through commercial sources constitute program related investments under section 4944(c) of the Code and are also qualifying distributions under section 4942(g).

'Advice has been requested whether, under the circumstances described below, low-interest loans granted by a private foundation to blind persons to enable them to establish businesses constitute program-related investments within the meaning of section 4944(c) of the Internal Revenue Code of 1954, and qualifying distributions within the meaning of section 4942(g).

'The foundation is exempt from Federal income tax under section 501(c)(3) of the Code and is a private foundation under section 509(a). It was established for the purpose of aiding the blind in securing gainful employment. It conducts a program of giving loans to blind persons who desire to establish themselves in business, but who are unable to obtain the necessary funds through commercial sources. Loans are repaid at an interest rate set at approximately one-half the commercial rate. No repayment of principal is required for the first two years.

Section 4944(c) of the Code defines the term 'program-related investments' for purposes of section 4944 as investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property.

'Section 53.4944-3(a)(2)(iii) of the Foundation Excise Tax Regulations provides that in determining whether a significant purpose of an investment is the production of income or the appreciation of property, it shall be relevant whether investors solely engaged in the investment for profit would be likely to make the investment on the same terms as the private foundation.

However, the fact that an investment produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

'Section 53.4944-3(b) (Example 1) of the regulations illustrates this rule with the case of a private foundation that makes a low-interest loan to a small business enterprise in a deteriorated urban area and owned by members of a disadvantaged minority group. The example states that conventional sources of funding were unwilling to provide funds to the enterprise, and that the foundation's primary purpose for making the loan was to

encourage the economic development of the minority group owning the local enterprise. The example concludes that the loan significantly furthered the accomplishment of the foundation's exempt purposes and would not have been made but for the relationship between the loan and the foundation's exempt purposes, and that the loan had no significant purpose involving production of income. Thus, the loan was a program-related investment.

'Section 4942(g)(1) of the Code provides that the term 'qualifying distributions' includes any amount paid to accomplish one or more purposes described in section 170(c)(2)(B). Among the purposes enumerated in section 170(c)(2)(B) are 'charitable' purposes.

'Section 53.4942(a)-3(a)(2) of the regulations further provides that qualifying distributions include program related investments as defined in section 4944(c) of the Code.

'The foundation's loan program accomplishes a charitable purpose by increasing the economic opportunities of the blind and alleviating the distress caused by their physical impairment. Because the loans are made only to those who are unable to obtain funds through commercial sources and are made at an interest rate below the market rate for comparable commercial loans, no significant purpose of the loans involves the production of income.

'Accordingly, loans granted by the foundation in the manner described are program-related investments within the meaning of section 4944(c) of the Code, and also constitute qualifying distributions within the meaning of section 4942(g).